

BOARD OF APPEALS CASE NO. 4930

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BEFORE THE

APPLICANT: John Kozarski

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ZONING HEARING EXAMINER

**REQUEST: Variance to construct a
carport within the required side yard
setback; 49 Old Sound Road, Joppa**

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OF HARFORD COUNTY

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Hearing Advertised

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Aegis: 5/26/99 & 6/2/99

HEARING DATE: July 28, 1999

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Record: 5/28/99 & 6/4/99

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ZONING HEARING EXAMINER'S DECISION

The Applicant, John Kozarski, appeared before the Hearing Examiner requesting a variance to Ordinance 6, Section 10.05, to construct a carport within the required 10 foot side yard setback in an R3/CDP District.

The subject parcel is located at 49 Old Sound Road in the First Election District. The parcel is identified as Parcel No. 156, in Grid 1-A, on Tax Map 69. The parcel contains .24 acres, more or less, all of which is zoned R3/CDP.

Mr. John Kozarski appeared and testified that he is requesting a variance to construct a carport with dimensions of 10 feet by 37 feet, which would abut the property line. The Applicant said the property is unique because 50% of the parcel is level and the remaining 50% slopes to the water. The Applicant said the addition of the carport would allow him to get his boat and cars off of Old Sound Road.

The Staff Report of the Department of Planning and Zoning recommends denial and provides:

"There does not appear to be any unique characteristics about the property or its use as compared to other residential properties in the area that would warrant approval of the requested variance....

The Department is of the opinion that the Applicant's request would result in overdevelopment of this property. The Department finds no sufficient justification pursuant to Section 267-11 of the Zoning Code to warrant approval of the requested variance based on the Applicant's current ability to utilize the property."

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CONCLUSION:

The Applicant is requesting a variance to Ordinance 6, Section 10.05 to construct a carport within the required 10 foot side yard setback in an R3, Urban Residential District developed as a Community Development Project. The Applicant is proposing a zero setback from the property line for the proposed carport.

The Applicant testified that the subject property is unique because about 50% of the parcel is level and the remainder of the parcel slopes to the water. However, the Staff Report of the Department of Planning and Zoning indicates that there is nothing significantly different or unique about the subject property as compared to other properties in the neighborhood.

A variance may only be granted after a two step inquiry. First, the zoning authority must determine whether the subject property is unique and different from the characteristics of surrounding properties to the extent that the uniqueness or peculiarities of the property (and not improvements on the property), impose a disproportionate impact on the subject parcel. If such a finding cannot be made, no further inquiry is needed and the petition fails. Umberly v. People's Counsel for Baltimore County, 108 Md. App. 497 (1996).

The Applicant did not offer testimony that approval of the variance would not be substantially detrimental to adjacent properties or materially impair the purpose of the Code and, to the contrary, the Staff Report indicates that approval of the variance would result in overdevelopment of the property.

Therefore, it is the finding of the Hearing Examiner that the Applicant has failed to prove that the property is unique, nor has the Applicant introduced testimony that approval of the variance would not be substantially detrimental to adjacent properties or materially impair the purpose of the Code.

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It is the recommendation of the Hearing Examiner that the requested variance to reduce the side yard setback to zero feet be denied.

Date AUGUST 12, 1999

L. A. Hinderhofer
L. A. Hinderhofer ds
Zoning Hearing Examiner